* HON'BLE SRI JUSTICE K.G.SHANKAR

+ Appeal Suit No.1560 of 1992

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% 04-6-2013

Valluri Srinivasa Rao, S/o Venkateswarlu, Hindu,
Aged 15 years, residing at China Ramaswamy
Kovel Street, Gavarapalem, Anakapalli;
and 5 others

… Appellants/Plaintiffs

Vs.

$ Valluri Vijaya Ramachandra Murty,
S/o Venkateswarlu, Hindu, aged 32 years,
Cultivation, residing at China Ramaswamy
Kovel Street, Gavarapalem, Anakapalli;
and 2 others

… Respondents/
Defendants 2, 5 and 12

! Counsel for the appellants: Sri M.V.Rajaram

Counsel for the Respondents: Sri O.Manohar Reddy

<Gist:

>Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE K.G.SHANKAR

Appeal Suit No.1560 of 1992

Date: 04-6-2013

Between

Valluri Srinivasa Rao
and 5 others

… Appellants/Plaintiffs

and

Valluri Vijaya Ramachandra Murty
and 2 others

… Respondents/
Defendants 2, 5 and 12

HON'BLE SRI JUSTICE K.G.SHANKAR

Appeal Suit No.1560 of 1992

Judgment:

The unsuccessful plaintiffs in O.S.No.152 of 1984 on the file of the Subordinate Judge, Anakapalle, Visakhapatnam District, assailed the judgment of the trial court dated 30-8-1990 through the present appeal. While all the six plaintiffs filed the present appeal, the appeal is

against the defendants 2, 5 and 12 only whereas there are as many as 23 defendants.

The defendants 1, 9 and 14 died during the pendency of the suit. The defendants 3, 15 and 17 to 21 remained *ex parte* in the suit. The rest of the defendants contested the suit.

2. While Sri M.V.Rajaram, learned counsel for the appellants-plaintiffs, advanced submissions on merits, Sri O.Manohar Reddy, learned counsel for the respondents/defendnts 2, 5 and 12, submitted that mortgagee defendants have not been made parties to the present appeal and that the appeal therefore is not maintainable.

3. The suit is laid for partition of the plaint schedule properties into six equal shares and for allotment of four such shares to the plaintiffs 1 to 4. The plaintiffs also sought for provision of maintenance to the plaintiffs 5 and 6 at the rate of Rs.100/- per month and also for a charge over the family properties towardes the marriage expenses of the plaintiffs 5 and 6.

4. Valluri Venkateswarlu, who is the 1st defendant, is claimed to be the common ancestor. The plaintiffs claimed that the 1st defendant did not marry but had taken Sakuntala, Sanjeevarao and Varalaxmi as concubines. It would however appear to be that Sakuntala was his wife

whereas Sanjeevarao and Varalaxmi alone were his concubines. Defendants 2 and 3 are the son and daughter of the 1st defendant through Sakuntala. The plaintiffs 1, 2 and 5 as well as one Laxmi are the children of the 1st defendant through Sanjeevarao. Varalaxmi gave birth to the plaintiffs 3, 4 and 6 through the 1st defendant.

5. Suryanarayana alias Surya Prakasarao, brother of the 1st defendant, filed O.S.No.17 of 1959 on the file of the Sub Court, Anakapalle, seeking for partition of the joint family properties. The suit ended in a compromise. The 1st defendant was initially allotted Ac.6-00 of land as preferential claim of the eldest member of the family (as Jyasta Bhagam) and the remaining property was divided into two equal halves. The 1st defendant and his brother Suryanarayana alias Surya Prakasarao were allotted one share each. The entire plaint schedule property herein is the property allotted to the 1st defendant in the said partition through compromise decree in O.S.No.17 of 1959. The plaintiffs claimed that Laxmi, eldest daughter of Sanjeevarao, was not impleaded as party as her marriage was already solemnized.

6. Most of the contesting defendants filed written

statements. The 1st defendant, *inter alia*, contended that one Dr. Annapurna was his sister and that she was expelled from the family as she violated the respect of the family and the caste (by contacting inter-caste marriage) and that with vengeance, his sister Dr. Annapurna instigated his brother Surya Prakasarao to file the suit O.S.No.17 of 1959. He denied the rights of the plaintiffs. The 2nd defendant, who is the son of the 1st defendant through Sakuntala, laid his separate written statement claiming that the plaintiffs are not entitled to any share. The other contesting defendants also filed written statements. The defendants 6, 7, 8 and 14 claimed that they are mortgagees of the property having been mortgaged by either the 1st defendant or the defendants 1 and 2 jointly. The 10th defendant contended that he is a lessee of part of the plaint schedule property. While the plaintiffs examined 3 witnesses, the defendants examined as many as 10 witnesses. The plaintiffs exhibited Exs.A-1 to A-4. The defendants in their turn exhibited Exs.B-1 to B-111. That apart, Exs.X-1 to X-13 were also marked. After considering the claims, the trial court found no merits in the case of the plaintiffs and dismissed the suit.

7. As already pointed out, the appeal is laid against the defendants 2, 5 and 12. The defendants 2, 5 and 12 indeed contested the suit by entering appearance and by

filing written statements. However, there are as many as 23 defendants out of whom, the defendants 1 to 3 are said to be the father, and half brother and half sister of the plaintiffs. Nevertheless, appeal was not laid against the 3rd defendant. Indeed, the 1st defendant is no more. At the same time, the legal representatives of the 1st defendant ought to have been brought on record in the appeal. More important, the 10th defendant claims possession over part of the plaint schedule property as a lessee whereas the defendants 6 to 8 and 14 claimed simple mortgages over parts of the plaint schedule property. I am afraid that this appeal without the defendants 6 to 8, 10 and 14 and without the 3rd defendant and the legal representatives of the 1st defendant is not maintainable merely against the defendants 2, 5 and 12. I agree with the contention of the learned counsel for the respondents in the appeal that the appeal is misconceived and is liable to be dismissed for non-joinder of necessary parties.

I therefore do not wish to go into the merits of the appeal as the appeal deserves to be dismissed *in limine* for the technical reasons of not impleading all or the material defendants.

8. Order XLI, Rule 4 C.P.C reads thus:

"**4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on**

> **ground common to all** :-- Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be."

9. It may be noticed that Order XLI, Rule 4 C.P.C envisages that some of the defendants or some of the plaintiffs may file the appeal. It however does not empower such some of the plaintiffs or some of the defendants, as the case may be, to appeal against some of the parties only. While the appellants can be only some of the parties to the suit, every party whose interest is at stake shall be arrayed as a respondent. It therefore is not open for the learned counsel for the appellants-plaintiffs to contend that the appeal is maintainable as it is laid against the defendants 2, 5 and 12. As already pointed out, all the mortgagees and the lessee as well as the 3rd defendant and the legal representatives of the 1st defendant are necessary parties. Failure to implead them in the appeal shall result in not sueing the plaintiffs in the appeal.

10. In that view of the matter, this appeal is found to be devoid of merits and is accordingly dismissed for non-joinder of necessary parties as respondents. However, there shall be no order as to costs.

K.G.SHANKAR, J.

04th June, 2013.

Note:-
L.R. Copy to be marked.
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HON'BLE SRI JUSTICE K.G.SHANKAR

Appeal Suit No.1560 of 1992
(P.D. Judgment)

04th June, 2013.
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